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**SUPREME COURT, U. S.
IN THE**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. ~~204~~ 24

**HALLIBURTON OIL WELL CEMENTING
COMPANY,**

Appellant,

versus

**JAMES S. REILY, COLLECTOR OF REVENUE,
STATE OF LOUISIANA (Since Succeeded by Rob-
ert L. Roland, Who Was Duly Succeeded by
Roland Cocreham),**

Appellee.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF LOUISIANA.**

**BRIEF OF AMICUS CURIAE (REPRESENTING
THOMAS JORDAN, INC.)**

**CHARLES D. MARSHALL,
1122 Whitney Building,
New Orleans 12, Louisiana,
Amicus Curiae
(Attorney for Thomas Jordan, Inc.)**

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 264

HALLIBURTON OIL WELL CEMENTING
COMPANY,

Appellant,

versus

JAMES S. REILY, COLLECTOR OF REVENUE,
STATE OF LOUISIANA (Since Succeeded by Robert L. Roland, Who Was Duly Succeeded by Roland Cooreham),

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF LOUISIANA.

BRIEF OF AMICUS CURIAE (REPRESENTING
THOMAS JORDAN, INC.)

The Issue.

The issue herein is this: Can a state levy a use tax solely because property is purchased outside the state, there being no sales tax imposed on a like purchase within the state?

Thomas Jordan, Inc., Represented by the Amicus Curiae, Has a Parallel Issue.

Jordan is in the business of renting barges to others in Louisiana. Many of Jordan's barges were built for Jordan by shipyards outside Louisiana. In litigation pending before the Board of Tax Appeals for the State of Louisiana, the State is claiming from Jordan sales and use tax in the amount of \$49,999.24 on account of these vessels.¹ At the time such vessels were built, the Louisiana sales tax would not have applied to their construction had it occurred in Louisiana.² The State nevertheless contends that use tax is due because of the out of state origin of the vessels.

Similarly, in the case at bar the issue is whether Halliburton must pay use tax on property brought by it into Louisiana although Halliburton would owe no sales tax to Louisiana if it had purchased such property within the State. Halliburton bought a used airplane and used oil field equipment outside Louisiana from persons not in the business of making such sales. Such sales are exempt from sales tax in Louisiana.³ Yet, because Halliburton bought this property out of the State, Louisiana endeavors to collect use tax. Once again, it is only the out of state purchase and movement across the state line that results in the claim of tax.

¹ Docket No. 993, Board of Tax Appeals of the State of Louisiana.

² This position is founded on *State v. J. Watts Kearney & Sons*, 181 La. 554, 160 So. 77, and *Claiborne Sales Co. v. Collector*, 233 La. 1061, 99 So. 2d 345.

³ La. R.S. of 1950, 47:301 (10), printed at p. 73 of the Jurisdictional Statement.

The Significance of the Issue.

U If a state may levy a use tax on property solely because of its out of state origin, war can be waged against interstate commerce. Louisiana Act 51 of 1959 exempts from sales and use tax vessels of fifty tons and over built in Louisiana shipyards.¹ If Louisiana may exempt vessels built in its yards while taxing vessels built in Mississippi and Texas yards, Louisiana has a potent weapon with which to discourage interstate commerce. Retaliation is certain, and economic barriers at state lines may result.

The Need for a Decision by This Court.

There has not been a decision by this Court outlining the need for equality between the application of the sales and use taxes so as to avoid discrimination against interstate commerce. In *Henneford v. Silas Mason Co.*, this Court sustained the validity of a use tax because "equality" existed between the sales and use taxes there involved;² nothing was said which would justify the imposition of a use tax which goes beyond the sales tax and discriminates against interstate commerce. Any such discrimination appears illegal under the decisions of this Court in analogous situations.³

The necessity for a statement by this Court of guiding principles arises from the decision of the Louisiana Supreme Court in this case, which found no con-

¹ La. R.S. of 1950, 47:305.1, printed at p. 84 of the Jurisdictional Statement.

² 300 U.S. 577, 584.

³ See *Memphis Steam Laundry Cleaner v. Stone*, 342 U.S. 389, and *Walling v. Michigan*, 116 U.S. 446.

stitutional impediment to exist. The Alabama Supreme Court has decided exactly the opposite.⁷ The movement of property across state lines is in ever increasing tempo and the problem in the case at bar is, and will be, of widespread occurrence.

CONCLUSION.

It is submitted that this Court should maintain jurisdiction of the appeal and reverse the decision of the Louisiana Supreme Court.

⁷ See p. 64 of the Jurisdictional Statement filed by Appellant.

⁸ *State v. Bay Towing and Dredging Company*, 265 Ala. 282, 90 So. 2d 743.

Respectfully submitted,

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